IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION 1

HILL RHF HOUSING PARTNERS, L.P.; and OLIVE RHF HOUSING PARTNERS, L.P., Plaintiffs/Petitioners and Appellants, v. CITY OF LOS ANGELES; DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT; and DOWNTOWN CENTER BUSINESS IMPROVEMENT DISTRICT MANAGEMENT CORPORATION, Defendants/Respondents and Respondents.	Court of Appeal No. B288356

Los Angeles County Superior Court Case No. BS138416
Hon. Amy D. Hogue, Department 86, (213) 830-0786
Judge of the Superior Court

APPELLANTS' OPENING BRIEF

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I.

INTRODUCTION

In resolution of a challenge to the propriety of a business improvement district and its special assessments, Appellants Hill RHF Housing Partners, L.P. and Olive RHF Housing Partners, L.P. (collectively, "RHF") and Respondent the City of Los Angeles ("the City") entered into a settlement agreement in February 2012 ("the Settlement Agreement"), by which the City promised to reimburse RHF for any assessment payments made to the Downtown Center Business Improvement District ("DCBID"). II AA 7 at 227-231.[1] The contractual language of the Settlement Agreement provides that the City's reimbursements to RHF are to continue for so long as RHF remains the owner of the subject properties, Angelus Plaza and Angelus Plaza North, and DCBID continues in its "current formulation." II AA 7 at 227.

A dispute as to the continued enforceability of the Settlement Agreement arose when DCBID was statutorily required to renew. II AA 7 at 259-261. Following the Los Angeles City Council's approval of the

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[1] The Appellants' Appendix will be cited as "[Volume no.] AA [tab no.] at [page no.]." The Reporter's Transcript will be cited as "RT at [page no.]."

renewed term set to commence on January 1, 2018, RHF filed a motion to enforce the Settlement Agreement, pursuant to Code of Civil Procedure section 664.6. III AA 13 at 652-655; II AA 7 at 205. The trial court denied RHF's motion based on: (1) a flawed preliminary finding that the scope of the Settlement Agreement was limited to settling select claims in the underlying petition commencing this action; (2) an improper conflation of the terms "DCBID" and "Ordinance of Intention," as used in the Settlement Agreement; and (3) a misconstruction of RHF's urged interpretation of the Settlement Agreement. IV AA 16 at 674-680.

Accordingly, RHF respectfully requests that the Court of Appeal reverse the trial court's ruling and conduct a plain language analysis of the Settlement Agreement to find that because DCBID – with its same management, services, and boundaries – is continuing in the same formulation, RHF remains entitled to a refund of its DCBID assessments.

II.

ISSUE PRESENTED

Whether the trial court erred as a matter of law in interpreting the Settlement Agreement as terminating on December 31, 2017, even though the Settlement Agreement provides that the duration of enforceability is

"[f]or so long as the Plaintiffs remain the owners of these properties, and the DCBID continues in its current formulation." II AA 7 at 227.

III.

STATEMENT OF THE CASE

A. The Petition/Complaint

On July 18, 2012, RHF filed a Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("the Petition") against the City, the Downtown Center Business Improvement District, and the Downtown Center Business Improvement District Management Corporation to challenge the propriety of DCBID's special assessments, which are governed by Article XIII D of the California Constitution and the Property and Business Improvement Law of 1994, California Streets and Highways Code section 36600 *et seq.* I AA 1 at 1-187.

RHF's Petition included four causes of action, each described in turn below, which alleged, broadly speaking, that DCBID's assessments were invalid generally as to all of the assessed parcels within the boundaries of DCBID, and specifically as to RHF's properties, Angelus Plaza, located at 255 S. Hill Street, Los Angeles, California, and Angelus Plaza North,

located at 200 S. Olive Street, Los Angeles, California. I AA 1 at 2-16.[2]

1. The First Cause of Action

The first cause of action alleged that Respondents violated the statutory requirements that assessments be based on the estimated benefit to the assessed real property or business, and that properties zoned solely for residential use not be subject to any assessment. I AA 1 at 8:23-10:10. Specifically, RHF alleged that Respondents failed to show how residential properties or residential properties for low-income seniors would benefit from DCBID's services, and failed to levy assessments which were based on the estimated benefit to RHF's properties. I AA 1 at 9:1-22.

2. The Second Cause of Action

The second cause of action alleged that Respondents violated the constitutional requirement that an assessing agency separate the general benefits from the special benefits which are conferred on a parcel because only special benefits are assessable. I AA 1 at 10:11-12:5. Specifically, RHF alleged that in failing to recognize the existence of general benefits, Respondents failed to separate the general benefits from the special benefits

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[2] Angelus Plaza and Angelus Plaza North are among the properties operated by RHF, one of the nation's largest non-profit providers of housing and services for low-income seniors. I AA 1 at 3:7-10.

so that only special benefits are assessed to any given parcel. I AA 1 at 10:17-11:17.

3. The Third Cause of Action

The third cause of action alleged that Respondents violated the constitutional requirement that assessments be based on the cost of an improvement or service. I AA 1 at 12:6-13:14. Specifically, RHF alleged that DCBID unlawfully calculated assessment amounts by relying on a projected budget and the measured square footage of a parcel, rather than the actual cost of DCBID's services. I AA 1 at 12:12-23.

4. The Fourth Cause of Action

The fourth cause of action alleged that Respondents failed to recognize RHF's tax exempt, non-profit status in levying an assessment on RHF's properties, which are restricted in use to providing housing to qualifying, low-income seniors at below-market rates. I AA 1 at 13:15-14:10. Importantly, this claim was not tied to any specific ordinance or district term.

B. The Parties' Settlement

The parties discussed settlement early in the litigation process. II

AA 7 at 244-255. On December 5, 2012, the City produced the initial draft of the Settlement Agreement, representing to RHF that the City intended to keep it simple: "Here's a draft for your review. We're trying to keep this simple, but we might have oversimplified." II AA 7 at 244-249.

In February 2013, RHF and the City entered into the Settlement Agreement. II AA 7 at 227-231. The Settlement Agreement provided a method by which RHF was to be reimbursed for any payments made toward DCBID's assessments while RHF remained a part of DCBID. II AA 7 at 227. Pursuant to the Settlement Agreement, RHF dismissed its Petition with prejudice on March 1, 2013, with the court retaining jurisdiction pursuant to Code of Civil Procedure section 664.6. II AA 7 at 230; I AA 6 at 202.

C. <u>The Dispute Under the Settlement Agreement</u>

The parties performed in accordance with the Settlement Agreement without incident during the years 2013 to 2017 ("the expired term"). IV AA 16 at 676:24. However, in 2017, the parties disputed the applicability of the Settlement Agreement to DCBID's ten year renewed term set to begin on January 1, 2018 ("the renewed term"). II AA 7 at 259-61.

Central to the issue of enforceability was the meaning of Paragraph 5

of the "RECITALS" of the Settlement Agreement, which provides as follows:

> In order to resolve the matters raised and described in the Litigation, the City will undertake to make the Plaintiffs whole for those assessments by the DCBID against the properties owned by Plaintiffs at the time of the formation of the DCBID, as described in the Petition. **For so long as the Plaintiffs remain the owners of these properties, and the DCBID continues in its current formulation,** the City will remit to Plaintiffs an amount sufficient to satisfy the amounts paid by Plaintiffs to the DCBID as part of assessments set forth in the Engineer's Report and the Management Plan.

II AA 7 at 227. (emphasis added). Paragraph 5 was never altered during the drafting process and is as originally drafted by the City. II AA 7 at 222:21-26, 244-255. And no other part of the Settlement Agreement provides an end date for the parties' reimbursement arrangement. The attorney who negotiated the Settlement Agreement on behalf of RHF in 2012 does not have any recollection of discussing the non-applicability of the Settlement Agreement to renewed terms. II AA 7 at 222:27-223:1. Thus, based on Paragraph 5, the Settlement Agreement was intended to remain in effect and enforceable against the City, as long as: (1) RHF remained the owner of the subject properties; and (2) DCBID continued in the same formulation.

On May 8, 2017, RHF advised the City of its position that the

Settlement Agreement should remain in effect through DCBID's renewal and inquired as to whether the City agreed. II AA 7 at 261. The City did not agree, taking the position that the Settlement Agreement terminated on December 31, 2017. II AA 7 at 259. Specifically, the City's counsel, Deputy City Attorney Daniel M. Whitley,[3] advised on June 27, 2017, "The new BID uses a different methodology, and so we don't believe it's using the same formulation as before. If [RHF] wishes to contest the assessments it will have to file suit." II AA 7 at 259.

D. <u>The 664.6 Motion</u>

On January 4, 2018, RHF filed its Motion to Enter Judgment pursuant to Code of Civil Procedure section 664.6 ("664.6 Motion"). II AA 7 at 205. On January 17, 2018, the City filed its opposition to RHF's 664.6 Motion. III AA 12 at 406. On January 24, 2018, RHF filed its reply in connection with its 664.6 Motion. IV AA 15 at 659.

In its moving papers, RHF argued, as it argues now, that because

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[3] Mr. Whitley was the attorney who provided the initial draft of the Settlement Agreement to RHF. II AA 7 at 244-249. Mr. Whitley was also the attorney who negotiated the Settlement Agreement on behalf of the City and whose signature appears on the Settlement Agreement. II AA 7 at 231.

DCBID is continuing in the same formulation, the plain language of the Settlement Agreement should be read to require reimbursements through DCBID's renewal. II AA 7 at 205-219. RHF also argued that any ambiguity should be interpreted against the City. II AA 7 at 217-218.

In its opposition papers, the City countered that the plain language of the Settlement Agreement limited the reimbursements to the expired term. III AA 12 at 406-422. In so arguing, the City focused on Paragraphs 2 and 6 rather than on Paragraph 5. III AA 12 at 406-22. The City additionally argued that despite having been founded in 1997, DCBID was a different entity every renewed term. III AA 12 at 414:26-415:20.

In its reply papers, RHF argued that Paragraph 2 simply provided context and Paragraph 6 limited the Settlement Agreement to DCBID and no other business improvement district. IV AA 15 at 659-667. RHF further argued that Paragraphs 2 and 6 did not cut against RHF's interpretation of Paragraph 5, and the Settlement Agreement should be read as a whole. IV AA 15 at 661-664.

On January 31, 2018, the trial court heard and denied RHF's motion. IV AA 17 at 681-690. The trial court ruled that the plain language of the Settlement Agreement limited the duration of enforceability to five years

("the Order"). IV AA 16 at 674-680. The trial court's ruling was grounded on a preliminary finding that "it is not reasonable to interpret the Agreement as an agreement to settle anything other than pending claims." IV AA 16 at 677:10-14. The trial court then determined that the pending claims in existence at the time of the Settlement Agreement were only those contained in the Petition. IV AA 16 at 677:12-14. The trial court then narrowly read the Petition to be a challenge only to the specific 2012 Ordinance of Intention declaring the City Council's intent to renew DCBID for a new term, and interpreted "every reference to 'the DCBID' in the Agreement as a reference to the [Ordinance of Intention]." IV AA 16 at 677:12-19, 678:12-14. The trial court further determined that RHF's interpretation of the Settlement Agreement would require the City to make reimbursement payments to RHF indefinitely, and was therefore unreasonable. IV AA 16 at 678:18-22.

IV.

STATEMENT OF APPEALABILITY

The trial court entered its order denying Appellants' Motion to Enter Judgment Enforcing Settlement Agreement pursuant to Code of Civil Procedure section 664.6 on January 31, 2018, for which Notice of Entry

was served on that same day. IV AA 17 at 690. On February 23, 2018, RHF timely filed its Notice of Appeal. IV AA 18 at 691-92. The trial court's order is appealable as an order after judgment pursuant to Code of Civil Procedure section 904.1(a)(2). *See also Walton v. Mueller* (2009) 180 Cal.App.4th 161, 167 (finding that an order after judgment denying a section 664.6 motion to enforce a settlement agreement is appealable).

V.

STANDARD OF REVIEW

A trial court's interpretation of a written instrument is subject to *de novo* review. *Parsons v. Bristol Dev. Co.* (1965) 62 Cal.2d 861, 865-66. A trial court's determination of the existence or nonexistence of ambiguity is also subject to *de novo* review. *Id.*; *see also Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165-166. Extrinsic evidence is properly admitted to determine the circumstances under which the parties contracted and the purpose of the contract. *Parsons,* 62 Cal.2d at 865-66; *see also* Civil Code § 1647; *see also* Code of Civil Procedure § 1860. A Court of Appeal is not bound by a construction of the contract based solely upon the terms of the written instrument without the aid of evidence where there is no conflict in the evidence. *Parsons,* 62 Cal.2d at 865-66. Accordingly, here, the Court

of Appeal must independently determine the continued enforceability of the Settlement Agreement. *See id.* at 865.

VI.

ARGUMENT

A. The Trial Court Committed Several Errors in its "Plain Language" Analysis of the Settlement Agreement.

The rules of contractual interpretation are set forth in California Civil Code, section 1635 *et seq.* The paramount consideration in the interpretation of contracts is the mutual intention of the parties at the time of contracting, as far as it is ascertainable and lawful. *See Western Camps, Inc. v. Riverway Ranch Enterprises* (1977) 70 Cal.App.3d 714, 723; *see also* Civ. Code § 1636. The language of a contract governs its interpretation, if the language is clear and explicit, and does not involve absurdity. Civ. Code §§ 1638 and 1639; *see also AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 822 ("[The mutual intention of the parties at the time of contracting] is to be inferred, if possible, solely from the written provisions of the contract"). The "clear and explicit" meaning of these provisions, interpreted in their ordinary and popular sense, controls judicial interpretation, unless used by the parties in a technical sense or given a

special meaning by usage. *AIU Ins. Co.,* 51 Cal.3d at 822; *see also* Civ. Code § 1644; *see also* Code Civ. Proc. § 1861. "Thus, if the meaning a layperson would ascribe to contract language is not ambiguous, the Court would apply that meaning." *Id.*

Purporting to base its ruling on the plain language of the Settlement Agreement, the trial court began its analysis as follows:

> The Court agrees with the City that the plain language of the Agreement limits the City's obligations to the term of the 2012 ordinance challenged in the Petition. As a preliminary matter, it is not reasonable to interpret the Agreement as an agreement to settle anything other than pending claims. The claims pending when the parties executed the Agreement were the claims alleged in the Petition. As noted above, the Petition specifically challenged Ordinance No. 182107 (the ordinance effectuating the 2012 DCBID attached as Exhibit A to the Petition) on the grounds that it violated various statutes and provisions in the California constitution. (Pet., ¶13 et seq.) It also specifically challenged the reports supporting that ordinance, the January 12, 2012 Engineer's Report and the January 2012 DCBID Management District Plan (Pet. Exhs. B and C.)

IV AA 16 at 677:9-19. The foregoing is followed by a justification of this limitation on the Settlement Agreement by reference to the Petition. IV AA 16 at 677:19-21. Based on this finding, the trial court limited the application of the Settlement Agreement to just the expired term of DCBID and not to the renewed term.

1. The Trial Court's Preliminary Finding that the Scope of the Settlement Agreement is Limited by the Petition is Fundamentally Flawed.

The trial court's analysis does not flow from the plain language (i.e., the ordinary and popular sense) of the Settlement Agreement. Rather, the trial court adopted the flawed reasoning that if the parties to a lawsuit enter into a contract to settle their action, then the scope of such a settlement agreement is necessarily limited to the underlying complaint or petition. The trial court did not point to any authority which presumes that settlement agreements resolving lawsuits are limited in this way, and clearly they are not.

In fact, it is rudimentary and commonplace for a settlement agreement to extend well beyond the pleading which commences an action. By way of just one illustration, in *Weddington Productions, Inc. v. Flick*, a lawsuit which was commenced to stop the unlawful use of a library of recorded sounds, the parties contemplated various terms which did not directly relate to the sound library, including the transfer of certain real property to the plaintiff. *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 799. In *Weddington*, the Court focused not on scope of

the underlying pleading, but on the existence of mutual intention and express consent. *Id.* at 797-99, 810. In outlining the essential elements of a contract, the Court recognized that "[a] settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts." *Id.* at 810-11. Accordingly, the scope of a settlement agreement is what the parties mutually agreed it to be – the trial court may not impose terms or limit the scope of the agreement in contradiction to its plain language. *See id.* at 797 ("Neither a mediator nor a judge may select and impose settlement terms on the authority of section 664.6").[4]

Thus, the trial court's preliminary finding, that "it is not reasonable to interpret the Agreement as an agreement to settle anything other than

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[4] *See also, e.g., 1538 Cahuenga Partners, LLC v. Turmeko Properties, Inc.,* 176 Cal.App.4th 139, 141 (2009) (affirming a trial court's granting a 664.6 motion in connection with a settlement agreement which involved parties who were not originally parties to the underlying action); *Hines v. Lukes,* 167 Cal.App.4th 1174 (2008) (pertaining to a dispute concerning the scope of permissible use, e.g., ingress, egress, and drainage, of an easement which resulted in a settlement agreement which included a variety of terms, including but not limited to those which required appellant to resurface a portion of her driveway, using "concrete materials" with a "neutral color") ; 46 California Forms of Pleading and Practice--Annotated § 520.15 (2018) ("Costs may not be shifted under Code Civ. Proc. 998 if the settlement agreement offer requires relinquishment of claims **in addition to those contained in the complaint** that is the basis of the litigation being settled") (emphasis added).

pending claims[ ] [because] [t]he claims pending when the parties executed the Agreement were the claims alleged in the Petition," is clearly erroneous. The references to the litigation in the Settlement Agreement should not have been interpreted by the trial court as an intention to incorporate the Petition so as to limit the scope of the Settlement Agreement. *See Weddington Productions, Inc.* (1998) 60 Cal.App.4th 793, 814 ("For the terms of another document to be incorporated into the document executed by the parties the reference must be clear and unequivocal[;] the reference must be called to the attention of the other party and he must consent thereto"). The trial court's conclusion is logically unsound because it places a cap on what a party to a lawsuit can negotiate, regardless of whether that party's bargaining power warrants and allows for negotiating terms which are not considered in a complaint. The trial court's legally and logically erroneous preliminary finding infects the entirety of the ruling.

2. Even Assuming the Propriety of the Trial Court's Preliminary Finding, the Settlement Agreement Would Not be Limited to DCBID's Expired Term.

Even if the trial court's sweeping preliminary finding – that the

Settlement Agreement could only resolve claims which were pending at the time of execution, as found in the Petition – were not in error, the Settlement Agreement could, and should, still extend beyond the expired term in order to settle the fourth cause of action in the Petition. The trial court did not analyze RHF's fourth cause of action, which alleged that RHF, as a non-profit provider of residential housing, is exempt from assessments **generally**. I AA 1 at 13:15-14:10. If, as the trial court assumes, the Settlement Agreement was limited to the claims contained in the Petition, then this cause of action would support a finding that the Settlement Agreement continues through DCBID's renewed term because this claim was not limited to the Ordinance of Intention.

Overlooking this claim, the trial court imposed a cramped limitation on the Settlement Agreement. IV AA 16 at 677:12-19. Specifically, the trial court interpreted the Petition as only challenging Ordinance No. 182107 and the associated Engineer's Report and Management District Plan, which were attached to and adopted by that ordinance. IV AA 16 at 677:12-19. The trial court's focus on Paragraph 13 of the Petition, which precedes the causes of action and simply provides undisputed procedural background of the actions taken by the Los Angeles City Council in 2012

to renew DCBID, led to an overly narrow reading of the Petition. IV AA 16 at 675:22-676:1.

3. The Trial Court Improperly Changed the Language of the Settlement Agreement.

A court cannot create or add terms to a settlement agreement. *Leeman v. Adams Extract & Spices, LLC* (2015) 236 Cal.App.4th 1367, 1374. Although a substantial portion of the Order is dedicated to the flawed preliminary finding described above, the real issue was, and is, the interpretation of the statement, "continues in its current formulation." Rather than interpret this statement, the trial court instead improperly interpolated language into the Settlement Agreement:

> Based on the allegations in the Petition, the Court interprets every reference to "the DCBID" in the Agreement as a reference to the 2012 ordinance and as evidence the parties only intended to agree to perform mutual promises while that ordinance was in effect . . . If the parties intended their Agreement to apply to future ordinances, they would have drafted language identifying such ordinances. The absence of such language is evidence the parties did not so intend.

IV AA 16 at 678:12-17. Thus, the trial court determined that "DCBID" is interchangeable with the "Ordinance of Intention," based on its flawed preliminary finding. DCBID, however, is not, and should not be, interchangeable with the Ordinance of Intention because the preliminary finding was erroneous.

The trial court also mistakenly read and altered Paragraph 1 of the Settlement Agreement when it found as follows: "[T]he term 'the DCBID' is a defined term under Paragraph 1 that references back to the 2012 ordinance 'as set forth in . . . the Litigation.' (Agreement, ¶ 1.)." IV AA 16 at 678:22-24. Paragraph 1 does not support the trial court's reading and instead provides:

> Disputes have arisen between the Parties regarding the **Downtown Center Business Improvement District (the "DCBID") located in the City of Los Angeles** as set forth in an action entitled Hill RHF Housing Partners, L.P.; Olive RHF Housing Partners, L.P. v. City of Los Angeles [ ], et al (the "Litigation").

II AA 7 at 227 (emphasis added). In Paragraph 1, DCBID is defined *without* any reference to an ordinance or any specific time period. II AA 7 at 227. This further supports a reversal based on the fact that the trial court erroneously altered the Settlement Agreement.

That the trial court erred in its interpretation of the Settlement Agreement is further supported by the parties' communications exchanged when RHF inquired, on May 8, 2017, as to whether the Settlement Agreement continued in effect through DCBID's renewed term. II AA 7 at 259-263. On May 22, 2017, when RHF requested the status of the City's response, the City's counsel responded, "We are still looking this over. It

appears that the management plan has substantial changes and so the settlement agreement would not apply, but we are still looking into the matter. I should know in a week or so." II AA 7 at 260. Then, in an email dated June 27, 2017, the City's counsel asserted, "The new BID uses a different methodology, and so we don't believe it's using the same formulation as before. If [RHF] wishes to contest the assessments it will have to file suit." II AA 7 at 259.

The City's counsel did not refer to any particular ordinance or suggest that the enforceability of the Settlement Agreement depended on such an ordinance. II AA 7 at 259. Rather, the City recognized that the issue was whether DCBID was continuing in its "same formulation." II AA 7 at 259. It is obvious from the language that the City's counsel used that he was referring to Paragraph 5 of the Settlement Agreement. II AA 7 at 259, II AA 6 at 227. This response is particularly significant because Mr. Whitley was the attorney who provided the initial draft of the Settlement Agreement to RHF. II AA 7 at 244. Mr. Whitley was also the attorney who negotiated the Settlement Agreement on behalf of the City and whose signature appears on the executed Settlement Agreement. II AA 7 at 244-255, 231.

The trial court erroneously did not even consider Mr. Whitley's communications in its analysis. *See Morey v. Vannucci* (1998) 64 Cal.App.4th 904, 912 (It is reversible error for a trial court to refuse to consider such extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous); *see also, Halicki Films v. Sanderson Sales & Mktg.*, 547 F.3d 1213, 1223 (9th Cir. 2008) (in the absence of indication in record that trial court considered certain preferred documents, appellate court had to assume that trial court did not consider documents not mentioned; failure to consider that evidence was reversible error: "the court was required to use the extrinsic evidence to aid in its interpretation of the contract.").

Here, although purporting to make its ruling based on the plain language of the Settlement Agreement, the trial court erroneously changed the language and substituted DCBID, the assessing agency which was "originally formed by the passage of the City's 1997 Ordinance No. 171678," with the Ordinance of Intention, an ordinance conveying the City Council's *intent* to renew DCBID. IV AA 16 at 674:25-673:1, 678:12-17. This interpretation was in fact an attack on the plain and clear language of the Settlement Agreement and rewrote the contract. *See Bacciocco v.*

Curtis (Cal. 1937) 72 P.2d 148, 153; *see also Baine v. Continental Assurance Co.* (1942) 21 Cal.2d 1 (finding that interpolating words that do not appear in a contract does violence to the plain and clear language of the contract).

As an aside, the trial court's conjecture that "[i]f the parties intended their Agreement to apply to future ordinances, they would have drafted language identifying such ordinances," is flawed because the parties just as easily could have (and would have) provided that the Settlement Agreement would end on December 31, 2017 if they intended for it to terminate on the last day of DCBID's expired term.[5] IV AA 16 at 678:15-17. Alternatively, the parties could have agreed to a specific duration of five years. Rather than include these two easily identifiable and definite durations, the parties used the language, "so long as . . . DCBID continues in its current formulation." These facts evidence that the parties intended the Settlement Agreement to continue beyond December 31, 2017. A plain reading of and the circumstances surrounding the Settlement Agreement do not support the trial court's interpretation.

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[5] Indeed, it would not have been possible to identify such future ordinances, so the trial court's comment in this regard defies common sense.

4. The Trial Court Erred in its Determination that RHF's Interpretation was Unreasonable.

After establishing a flawed preliminary finding and erroneously determining that it would interpret "every reference to 'the DCBID' . . . as a reference to the 2012 ordinance," the trial court committed further error by finding that the interpretation urged by RHF was unreasonable, incorrectly construing RHF's interpretation of the Settlement Agreement as requiring the City to make reimbursement payments "forever." IV AA 16 at 678:18-22, 679:6-13.

To the contrary, the Settlement Agreement does not so provide, and RHF did not urge this interpretation; the Settlement Agreement specifically provides for termination when DCBID continues in a different formulation. II AA 7 at 227. The situation presented below, on the other hand, was a **renewal.**

RHF urged, and still urges, that the ordinary and popular meaning of the subject language in dispute – **"For so long as the Plaintiffs remain the owners of these properties, and the DCBID continues in its current formulation, the City will remit to Plaintiffs an amount sufficient to satisfy the amounts paid by Plaintiffs to the DCBID"** – be plainly read to

require two conditions for the continuity of the Settlement Agreement: (1) that RHF remain the owner of the subject properties; and (2) that DCBID continues in its "current formulation." II AA 7 at 227. Conditioning the continuity of an agreement on DCBID's continuing in the same formulation does not render the Settlement Agreement a "forever" commitment.

Indeed, the City is empowered to terminate the Settlement Agreement by reformulating DCBID, as discussed in greater detail in Section VI.B.2, *infra*. The trial court erred in misconstruing the plain language of the Settlement Agreement, as well as RHF's position about it.

B. <u>Based on the Plain Language of the Settlement Agreement, It is Enforceable Through DCBID's Renewed Term.</u>

Because it is undisputed that RHF has been and continues to be the owner of the subject properties, the issue should have turned on whether DCBID was said to "continue[ ] in its current formulation," despite a renewed term. II AA 7 at 227. Although the City and trial court minimized the centrality of Paragraph 5, RHF urges that the Court of Appeal find that the clear and explicit language of Paragraph 5 does not require a December 31, 2017 end date to the arrangement, and instead supports a finding of enforceability through DCBID's current and future terms, so long as

"DCBID continues in its current formulation." II AA 7 at 227. That this ten year term was a renewal as opposed to a new formulation clearly supports RHF's position.

The ordinary and popular meaning of the subject language in dispute, **"For so long as the Plaintiffs remain the owners of these properties, and the DCBID continues in its current formulation, the City will remit to Plaintiffs an amount sufficient to satisfy the amounts paid by Plaintiffs to the DCBID,"** must plainly be read as requiring that so long as RHF remains the owner of the subject properties, and so long as DCBID continues in the same formulation – with its same boundaries, services, methodology, and management – RHF is to receive reimbursements from the City. II AA 7 at 216:6-217:2, 227. And because DCBID *is* in fact continuing with the same boundaries, services, methodology, and management, as it has since it was founded through consecutive renewals, the Settlement Agreement should have been found to continue. II AA 7 at 216:6-217:2, 227, 235.

1. DCBID's Renewal was a Continuance, Which Supports RHF's Interpretation.

A renewal is a continuance, and DCBID, in its renewed term, is continuing in the same formulation that it had during its expired term. A comparison between the expired DCBID's Engineer's Report and the renewed DCBID's Engineer's Report, which were both prepared by the same company and engineer, compels such a finding. II AA 7 at 264-335; 336-396. First, the boundaries of the renewed DCBID are identical to and unchanged from the expiring DCBID. II AA 7 at 225:12-15; 270-273; 347-351. Second, a substantial portion of the language used in the Engineer's Report dated March 2017, prepared for DCBID's renewed term, is identical to and unchanged from the Engineer's Report dated January 2012, prepared for DCBID's expired term.[6] II AA 7 at 225:12-22, 264-335; 336-396.

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[6] By way of example, Section A of the 2012 Engineer's Report and Section B of the 2017 Engineer's Report, which both describe DCBID's services, contain the following identical language to describe the Safety Program, one of the services DCBID is continuing to provide:

> The Safety Program will provide security services for the individual assessed parcels located within the District in the form of patrolling bicycle personnel, nighttime vehicle patrol and downtown ambassadors. Both zones one and two receive the same level of safe services. The purpose of the Safe Team Program is to prevent, deter and report illegal activities taking place on the streets, sidewalks, storefronts, parking lots and alleys. The presence of the Safe Team Program is intended to deter such illegal activities as public urination, indecent exposure, trespassing, drinking in public,

Specifically, substantial portions of the language contained in Sections B (which describes the services), C (which describes the boundaries), and D (which describes the methodology) of the 2017 Engineer's Report are literally copied from the language contained in parallel Sections of the 2012 Engineer's Report, respectively, Sections A (which describes the services, exactly as they are described in the 2017 version), B (which describes the boundaries, also as described in the 2017 version), E (which describes the methodology, assessable square footage, which remains unchanged in the 2017 version).[7] II AA 7 at 225:7-22, 267-273, 278-280, 342-354.

> prostitution, illegal panhandling, illegal vending, and illegal dumping. The Program will supplement, not replace, other ongoing police, security and patrol efforts within the District . . . The Safe Team Program will only provide its services to assessed properties within the District boundaries. The special benefit to assessed parcels from those services is increased commercial activity which directly relates to increases in lease rates, residential servicing businesses and customer usage.

II AA 7 at 267, 342.

[7] The most notable difference between the two Engineer's Reports is that the 2012 version calculated general benefits as zero, whereas the 2017 version calculated general benefits as a number other than zero. III AA 12 at 410:22-27. This makes no difference, however, given that DCBID has at all times been governed by the same law that requires business improvement districts to separate and quantify special benefits from general benefits.

Third, the Management Corporation administered DCBID during its expired term and it will continue to administer DCBID during its renewed term, overseeing expenditures, and managing and implementing DCBID's improvements and activities. III AA 11 at 451, 467, 497, and 498. In other words, organizationally, DCBID has remained the same.

Lastly, the expired DCBID's method of calculating assessments was entirely based on "assessable square footage," and the renewed DCBID's method of calculating assessments is also based on "assessable square footage." II AA 7 at 225:2-11; 278-280, 352-354. Because the renewed DCBID substantively mirrors the expired DCBID, the statutorily required renewal should not impact the Court's understanding that DCBID is continuing in the same formulation.

Moreover, DCBID's treatment of its renewal as a continuance – as exemplified by its letter dated January 1, 2017, requesting property owners to submit petitions to renew DCBID so that *existing* services will *continue* to be provided – strongly supports a finding that the Settlement Agreement continues in effect notwithstanding a renewal. II AA 7 at 234-238. Further still, the CEO and President of DCBID, Carol Schatz, in her email dated June 10, 2016, acknowledged that DCBID's new term in 2018 was a

renewal. II AA 7 at 232-233. Thus, the evidence treating the term beginning in 2018 as a renewal and a continuance of the expired term leads to the inescapable conclusion that DCBID is continuing in its "current formulation."

It should be noted that the trial court also understood DCBID to be continuing as it has since it was "originally formed by the passage of the City's 1997 Ordinance No. 171678." IV AA 16 at 674:24-675:1, 675:11-19. The City also admitted in its opposition that "[S]omething named the DCBID has continued providing similar services since 1997 . . . All of the DCBIDs have provided similar services (i.e., safety, cleaning, and district identity/marketing services, as well as administrative upkeep)."[8] III AA 12 at 410:14-27. Despite the City's not wanting to straightforwardly admit that DCBID is continuing in the same formulation as it has since 1997, as a layperson (such as the owner of an assessed property or a visitor to the district) would understand it, DCBID is not a different entity every time it renews.

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[8] The City also conceded that "the evidence shows that the 2018 DCBID does not 'continue' or 'renew' the 2013 DCBID, but the 1997 DCBID. The 2018 DCBID 'renews' and 'continues' a line of DCBIDs that started no later than 1997." III AA 12 at 409:13-15.

Lastly, neither the ordinance which adopted DCBID's renewed term nor the ordinance which adopted DCBID's expired term refer to DCBID simply as DCBID – not *this* DCBID or *that* DCBID. IV AA 15 at 669-672; III AA 13 at 652-655. The language contained in all of the ordinances adopting DCBID for new terms, simply refers broadly and generally to DCBID as DCBID, supporting RHF's contention that DCBID is not defined by its term (which is statutorily required to be renewed) or by the specific ordinance renewing its term.[9] IV AA 15 at 669-672; III AA 13 at 430-432, 434-436, 489-492, 652-655.

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[9] For example, Ordinance No. 182171, in connection with DCBID's expired term, begins by simply providing that it is "[a]n ordinance establishing the Downtown Center Property and Business Improvement District (District) and levying assessments, pursuant to the Provisions of the Property and Business Improvement District Law of 1994 (Division 18, Part 7, Streets and Highways Code, State of California). IV AA 15 at 669-672. Section 1 of the operative language of this ordinance provides, "The City Council hereby establishes the Downtown Center Business Improvement District and levies an assessment on each property within the District for each fiscal year referred to in the Management District Plan." IV AA 15 at 669. Ordinance No. 185006, relating to DCBID's renewed term, contains identical language which does not tie the definition of DCBID to a specific term but rather refers broadly and generally to DCBID. III AA 13 at 652-655. This broad and general reference in these two ordinances does not support a finding that DCBID is a different entity every time it is renewed by a new ordinance.

2. The City Had the Power to Reformulate, Had it Chosen to Do So.

The Property and Business Improvement District Law of 1994 contemplates and provides provisions for an assessing agency to renew at the expiration of a term or disestablish altogether. *See* Sts. & High. Code §§ 36660 (renewal) and 36670 (disestablishment). Streets and Highways Code section 36660(c) specifically provides, "There is no requirement that the boundaries, assessments, improvements, or activities of a renewed district be the same as the original or prior district." Thus, upon a renewal or disestablishment, the City could have elected to reformulate DCBID, but it did not and instead, it renewed DCBID with the same formulation that it had during its previous term, with the same services, boundaries, methodology, and management, and essentially the same Engineer's Report, as discussed more fully above. Thus, the City had both the power and ability to act so to terminate the Settlement Agreement but opted not to do so.

For example, the City could have reformulated DCBID to provide services not previously provided, as listed under Streets and Highways Code sections 36606 (describing assessable activities) and 36610

(describing assessable improvements).[10] New and other improvements could have included additional parking facilities, trash receptacles, public restrooms, parks, fountains, and malls. *See* Sts. & High. Code § 36610. The addition of different services (e.g., an improvement, as defined by the relevant statute) would have required a reformulated analysis of how properties would specially benefit from those services. Here, the services remain unchanged between DCBID's consecutive terms.

Alternatively, the City could have reformulated DCBID to levy assessments under a different assessment scheme, like the one in *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431. There, a countywide assessment was levied for the purpose of acquiring, improving, and maintaining unspecified open space lands pursuant to the Landscape and Lighting Act of 1972, Streets and Highways Code section 22500 *et seq*. *Id.* at 437-38. Or, the City could have reformulated DCBID to levy assessments only on residential properties for the purpose of refurbishing and maintaining public parks, as was the case in *Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516.

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[10] These lists are expressly non-exhaustive of the activities and improvements that a business improvement district can provide. *See* Sts. & High. Code §§ 36606 and 36610.

In that instance, DCBID would depart from its previous formulation, since DCBID has been assessing RHF's properties which are residential, as well as commercial properties.

The City could also have renewed DCBID with a new and different methodology of calculating special benefits, rather than continue to rely solely on assessable square footage. *See, e.g., Beutz, supra,* 184 Cal.App.4th at 1526 (pertaining to the validity of an engineer's report which determined that all assessed parcels – 6,858 single-family residential or dwelling units – benefited equally from the maintenance of public parks).[11] In sum, the City renewed DCBID to continue in the same exact formulation that it had during its expired term. Accordingly, the Court of Appeal should find that the Settlement Agreement remains in effect.

3. The Settlement Agreement Should Be Read as a Whole.

The City argued, and the trial court agreed, that regardless of the language contained in Paragraph 5, Paragraphs 2 and 6 should be read to

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[11] Ultimately, the *Beutz* court found that the engineer's report failed to comply with the law, in part, because it failed to address whether residents who live in close proximity to the proposed improvement may reasonably be expected to use the improvement just as often as the residents who live several miles away from the improvement. *Beutz,* 184 Cal.App.4th at 1532.

limit the enforceability of the Settlement Agreement to the expired term. IV AA 16 at 677:4-11. However, Paragraph 2 of the "RECITALS" merely provides the context from which the underlying litigation arose:

> This litigation concerns the formation of the DCBID adopted by ordinance of the City Council on June 19, 2012. The DCBID is a special assessment district that must comply with the requirements of Section 4 of Article XIIID of the California Constitution. The details for the operation of the DCBID and the assessments to be made to support the operation of the DCBID are set forth in an Engineer's Report and a District Management Plan, which are attached to the Petition for Peremptory Writ of Mandate ("Petition") on which this matter is based. The Plaintiffs timely filed an action challenging the validity of the assessments that would be made by the DCBID against property owned by Plaintiffs.

II AA 7 at 227. And Paragraph 6 establishes: (1) RHF's obligation under the Settlement Agreement to remain a part of DCBID through December 31, 2017; and (2) that the Settlement Agreement only concerns DCBID and no other business improvement district:

> Plaintiffs will remain part of the DCBID and will abide by the terms of the DCBID until the DCBID expires in 2018. This Agreement does not address any business improvement districts except the DCBID adopted by ordinance of the City Council on June 19, 2012.

II AA 7 at 227. Neither of these paragraphs establishes an end date for the Settlement Agreement which supplants the one provided in Paragraph 5.[12]

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[12] The trial court also misconstrued Paragraph 1, which defines DCBID but does not refer to any ordinance: "Disputes have arisen between the Parties regarding the Downtown Center Business Improvement District (the "DCBID") located in the City of Los Angeles." II AA 7 at 227.

II AA 7 at 227. In interposing a narrow reading of the Petition into the Settlement Agreement, by way of Paragraphs 2 and 6, the trial court failed to give effect to Paragraph 5, the only provision that specifically addresses the duration of the Settlement Agreement. *See* Civil Code § 1641 ("The whole of a contract is to be taken together, so as to give effect to every part").

And while it is true that Paragraph 2 refers to the 2012 Engineer's Report and 2012 Management District Plan, and Paragraph 6 refers to the ordinance adopted by the City Council in 2012, the *lack* of these references in Paragraph 5 supports a finding that the enforceability of the Settlement Agreement was not intended to be tied to any specific DCBID term. In other words, that specific references to the 2012 Engineer's Report and 2012 Management District Plan and the June 2012 Ordinance adopting DCBID's term beginning on January 1, 2013, are found in neighboring provisions but *not* in Paragraph 5, only supports a finding that the reimbursement arrangement continues beyond the expired DCBID term.

4. The Circumstances Surrounding the Settlement Agreement Support Finding in Favor of RHF's Interpretation of the Contractual Language.

Where there is doubt as to the parties' dealings as expressed in the wording of their contract, the Court may look to the circumstances surrounding the execution – including the object, nature, and subject matter of the agreement – as well as to subsequent acts or declarations of the parties shedding light upon the question of their mutual intention at the time of contracting. *Barham v. Barham* (1949) 33 Cal.2d 416, 423 ("To this latter point, it is said that 'a construction given the contract by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight and will, when reasonable, be adopted and enforced by the court'").

a. The City Drafted the Settlement Agreement to be Kept "Simple."

When counsel for the City provided RHF with the initial draft of the Settlement Agreement, including Paragraph 5, the City represented that it was trying to keep the Settlement Agreement simple. II AA 7 at 244. As such, the parties intended the language in Paragraph 5 (and the Settlement Agreement generally) to be understood in its ordinary and popular sense. To give the contractual language in dispute any other meaning would run counter to the City's representation – and RHF's understanding – that the

Settlement Agreement was intended to be kept simple.

b. The Parties Knew the End Date of DCBID But Still Did Not Use That Date to Define the Duration of the Settlement Agreement.

When the parties entered into the Settlement Agreement in February 2013, the parties knew the exact date on which the expired term would end – December 31, 2017 – which would then require a renewal as provided in Chapter 5 (entitled "Renewal") of Title 7 of the Streets and Highways Code. I AA 1 at 97. Despite the parties' knowing this exact date, the Settlement Agreement does not provide an end date of December 31, 2017. Nor does it provide an end date as of "the end of this term." Rather, the language requires that RHF remain the owners of the subject properties and that DCBID continue in its current formulation. II AA 7 at 227. In further support of this, the attorney representing RHF at the time of contracting has no recollection of discussing the non-applicability of the Settlement Agreement to renewal terms. II AA 7 at 222:27-223:2.

Moreover, the statutorily required renewals of DCBID should not be found to "discontinue" and create an all new DCBID. *See* Sts. & High. Code § 36660 ("Upon renewal, a district shall have a term not to exceed 10

years"). Rather, the renewals are a procedural safeguard to ensure that properties are properly assessed and the assessments are strictly compliant with the law governing same. *See Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 443-45 ("Proposition 218, which added . . . XIII D to the California Constitution . . . was designed to 'constrain local governments' . . . [and] intended to make it more difficult for an assessment to be validated in a court proceeding").

c. The City's Asserted Understanding of the Contractual Language Does Not Disrupt the Effectiveness of the Settlement Agreement.

The City's counsel, who negotiated and executed the subject Settlement Agreement on behalf of the City in 2013, asserted in an email dated June 27, 2017, that "[t]he new BID uses a different methodology, and so we don't believe it's using the same formulation as before." II AA 7 at 259. Stated differently, the City equates the term "formulation" with "methodology." The two terms are not interchangeable, however. But even assuming *arguendo* that the City's interpretation of the disputed word, "formulation," was the mutually intended interpretation, the Court should regardless find that DCBID is continuing in its current formulation because

the "methodology" for both the current DCBID and the renewed DCBID is based on assessable square footage. II AA 7 at 225:2-11, 278-280, 352-354. A comparison of Pages 13-15 of the 2012 Engineer's Report and Pages 15-17 of the 2017 Engineer's Report, each providing a discussion of "Methodology," highlights this point. II AA 7 at 225:2-11, 278-280, 352-354. Thus, the methodology is the same, despite the City's counsel's claim to the contrary, and based on the City's own understanding of the term "formulation," DCBID is continuing in its same formulation.

C. If There Was Any Ambiguity, the City Caused it and RHF's Understanding of What was Promised Should Prevail.

A provision will be considered ambiguous when it is capable of two or more constructions, both of which are reasonable. *Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 868 (reversing the Court of Appeal's holding that an environmental agency's order, notifying an insured of its responsibility for pollution and requiring remediation, constituted a "suit" as used in the insurance policy). "If ambiguity remains, notwithstanding an ordinary and popular meaning analysis, the ambiguity is resolved by interpreting the contractual language in the sense the promisor (i.e., the City) believed the promisee (i.e., RHF) understood the language at

the time of formulation." *AIU, supra*, 51 Cal.3d at 822. This rule protects not the subjective beliefs of the promisor but, rather, the objectively reasonable expectations of the promisee. *See Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1265.

RHF's claims against the City, which the Settlement Agreement resolved, included a claim that RHF is a tax-exempt, non-profit provider of housing to low-income seniors and the subject properties are restricted to that use, as alleged in the fourth cause of action. I AA 1 at 13:15-14:10. Given this, it was reasonable for RHF to expect that the Settlement Agreement would resolve the issue of its properties being assessed by DCBID through any renewals, absent language to the contrary. The City, being the party subject to the law governing business improvement districts, would have known that DCBID could be renewed for a new term beginning on January 1, 2018, yet did not broach the topic with RHF. II AA 7 at 222:27-223:2. Additionally, given that DCBID has "existed since at least 1997" and "[a]ll of the DCBIDs have provided similar services, and until the most recent had similar formulations and methodologies for assessing the costs of special benefits," it was reasonable for RHF to expect that the Settlement Agreement would continue so long as DCBID continued

in the same formulation, which it has. III AA 12 at 410:9-27. Accordingly, RHF's objectively reasonable expectation was that the Settlement Agreement would continue to apply through any renewals.

In cases where uncertainty is not removed by the aforementioned rules of interpretation, then the language should be interpreted most strongly against the party who caused the uncertainty to exist. Civ. Code § 1654; *see also AIU, supra,* 51 Cal.3d at 822 (If ambiguity still remains, then the "ambiguous language is construed against the party who caused the uncertainty to exist").

Here, the City is the drafter of Paragraph 5. II AA 7 at 244-255. Moreover, the City is the entity subject to the procedural safeguard of business improvement districts having to be renewed every five or ten years pursuant to Chapter 5 (entitled "Renewal") of Title 7 of the Streets and Highways Code. The procedural safeguard of renewals, intended to protect the property owner from the assessing agency, should not be used against the property owner simply because DCBID, by its very nature, must be repeatedly renewed. *See Silicon Valley, supra,* 44 Cal.4th at 443-45. For these reasons, the burden of any ambiguity contained in the Settlement Agreement should not be placed on RHF, but rather, the City.

VII.

CONCLUSION

For the foregoing reasons, RHF requests that the Court of Appeal reverse the trial court's ruling on RHF's 664.6 Motion and enforce the Settlement Agreement against the City.

DATED: June 18, 2018

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By: 

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CERTIFICATE OF COMPLIANCE

[Cal. Rule of Court 8.204(c)(1)]

The text of this brief consists of 9,692 words as counted by the Microsoft Word 2010 word-processing program used to generate the brief, not including the tables of contents and authorities, and caption page.

DATED: June 18, 2018

REUBEN RAUCHER & BLUM

By: _____
Stephen L. Raucher
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PROOF OF SERVICE BY E-MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action, my business address is 12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.

On June 18, 2018, I served the foregoing document described as:

APPELLANTS' OPENING BRIEF

on all interested parties in this action by serving a true copy of the above described document in the following manner:

Daniel M. Whitley, Esq. Deputy City Attorney City Hall East 200 N. Main Street, Room 920 Los Angeles, CA 90012 Telephone: (213) 978-7786 Facsimile: (213) 978-7811 Email: daniel.whitley@lacity.org *Attorneys for City of Los Angeles*	Michael G. Colantuono, Esq Holly O. Whatley, Esq. Pamela K. Graham, Esq. Colantuono, Highsmith & Whatley, PC 790 East Colorado Blvd, Suite 850 Pasadena, CA 91101 Telephone: (213) 542-5700 Facsimile: (213) 542-5710 Email: mcolantuono@chwlaw.us Email: hwhatley@chwlaw.us Email: pgraham@chwlaw.us *Attorneys for Downtown Center Business Improvement District Management Corporation*

I am familiar with the office practice of Reuben Raucher & Blum for collecting and processing documents for delivery by E-Mail. Under that practice, documents and email by Reuben Raucher & Blum personnel responsible for emailing are transmitted on that same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 18, 2018, at Los Angeles, California.

Nathalie Quach

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.

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Los Angeles Superior Court
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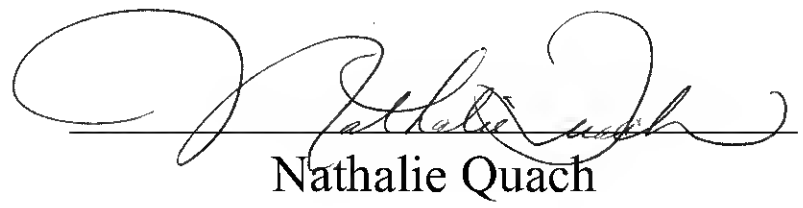

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